

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 315

**Citations Affected:** IC 12-10; noncode.

**Synopsis:** Aging and long term care services. Conference committee report for ESB 315. Provides that a person who has made certain asset transfers is not eligible for residential care assistance. Requires the adoption of rules to implement: (1) a screening and counseling program for individuals seeking long term care services; (2) a process of prior approval for certain individuals seeking admission to a nursing facility; and (3) the annual review of Medicaid rates. Prohibits the state department of health from approving the certification of new or converted comprehensive care beds for participation in the Medicaid program until July 1, 2011, unless the state comprehensive care bed occupancy rate is more than 95% in health facilities. Allows for an exception for replacement beds and continuing care retirement communities under development if specified requirements are met. Makes conforming and technical changes. **(This conference committee report: (1) removes language that transferred the adult guardianship program from the division of aging to the division of disability and rehabilitative services; and (2) adds language that exempts certain continuing care retirement communities under development from the limitation on Medicaid comprehensive care beds.)**

**Effective:** March 31, 2008; July 1, 2008.

## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 315 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 12-10-6-2.1, AS AMENDED BY P.L.99-2007,
- 3 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2008]: Sec. 2.1. (a) An individual who is incapable of residing
- 5 in the individual's own home may apply for residential care assistance
- 6 under this section. The determination of eligibility for residential care
- 7 assistance is the responsibility of the division. Except as provided in
- 8 subsections (g) and (i), an individual is eligible for residential care
- 9 assistance if the division determines that the individual:
- 10 (1) is a recipient of Medicaid or the federal Supplemental Security
- 11 Income program;
- 12 (2) is incapable of residing in the individual's own home because
- 13 of dementia, mental illness, or a physical disability;
- 14 (3) requires a degree of care less than that provided by a health
- 15 care facility licensed under IC 16-28; ~~and~~
- 16 (4) can be adequately cared for in a residential care setting; **and**
- 17 **(5) has not made any asset transfer prohibited under the state**
- 18 **plan or in 42 U.S.C. 1396p(c) in order to be eligible for**
- 19 **Medicaid.**
- 20 (b) Individuals with mental retardation may not be admitted to a
- 21 home or facility that provides residential care under this section.
- 22 (c) A service coordinator employed by the division may:

1 (1) evaluate a person seeking admission to a home or facility  
2 under subsection (a); or

3 (2) evaluate a person who has been admitted to a home or facility  
4 under subsection (a), including a review of the existing  
5 evaluations in the person's record at the home or facility.

6 If the service coordinator determines the person evaluated under this  
7 subsection has mental retardation, the service coordinator may  
8 recommend an alternative placement for the person.

9 (d) Except as provided in section 5 of this chapter, residential care  
10 consists of only room, board, and laundry, along with minimal  
11 administrative direction. State financial assistance may be provided for  
12 such care in a boarding or residential home of the applicant's choosing  
13 that is licensed under IC 16-28 or a Christian Science facility listed and  
14 certified by the Commission for Accreditation of Christian Science  
15 Nursing Organizations/Facilities, Inc., that meets certain life safety  
16 standards considered necessary by the state fire marshal. Payment for  
17 such care shall be made to the provider of the care according to  
18 division directives and supervision. The amount of nonmedical  
19 assistance to be paid on behalf of a recipient living in a boarding home,  
20 residential home, or Christian Science facility shall be based on the  
21 daily rate established by the division. The rate for facilities that are  
22 referred to in this section and licensed under IC 16-28 may not exceed  
23 an upper rate limit established by a rule adopted by the division. The  
24 recipient may retain from the recipient's income a monthly personal  
25 allowance of fifty-two dollars (\$52). This amount is exempt from  
26 income eligibility consideration by the division and may be exclusively  
27 used by the recipient for the recipient's personal needs. However, if the  
28 recipient's income is less than the amount of the personal allowance,  
29 the division shall pay to the recipient the difference between the  
30 amount of the personal allowance and the recipient's income. A reserve  
31 or an accumulated balance from such a source, together with other  
32 sources, may not be allowed to exceed the state's resource allowance  
33 allowed for adults eligible for state supplemental assistance or  
34 Medicaid as established by the rules of the office of Medicaid policy  
35 and planning.

36 (e) In addition to the amount that may be retained as a personal  
37 allowance under this section, an individual shall be allowed to retain  
38 an amount equal to the individual's state and local income tax liability.  
39 The amount that may be retained during a month may not exceed  
40 one-third ( $1/3$ ) of the individual's state and local income tax liability for  
41 the calendar quarter in which that month occurs. This amount is  
42 exempt from income eligibility consideration by the division. The  
43 amount retained shall be used by the individual to pay any state or local  
44 income taxes owed.

45 (f) In addition to the amounts that may be retained under  
46 subsections (d) and (e), an eligible individual may retain a Holocaust  
47 victim's settlement payment. The payment is exempt from income  
48 eligibility consideration by the division.

49 (g) The rate of payment to the provider shall be determined in  
50 accordance with a prospective prenegotiated payment rate predicated  
51 on a reasonable cost related basis, with a growth of profit factor, as

determined in accordance with generally accepted accounting principles and methods, and written standards and criteria, as established by the division. The division shall establish an administrative appeal procedure to be followed if rate disagreement occurs if the provider can demonstrate to the division the necessity of costs in excess of the allowed or authorized fee for the specific boarding or residential home. The amount may not exceed the maximum established under subsection (d).

(h) The personal allowance for one (1) month for an individual described in subsection (a) is the amount that an individual would be entitled to retain under subsection (d) plus an amount equal to one-half (1/2) of the remainder of:

(1) gross earned income for that month; minus

(2) the sum of:

(A) sixteen dollars (\$16); plus

(B) the amount withheld from the person's paycheck for that month for payment of state income tax, federal income tax, and the tax prescribed by the federal Insurance Contribution Act (26 U.S.C. 3101 et seq.); plus

(C) transportation expenses for that month; plus

(D) any mandatory expenses required by the employer as a condition of employment.

(i) An individual who, before September 1, 1983, has been admitted to a home or facility that provides residential care under this section is eligible for residential care in the home or facility.

(j) The director of the division may contract with the division of mental health and addiction or the division of disability and rehabilitative services to purchase services for individuals with a mental illness or a developmental disability by providing money to supplement the appropriation for community residential care programs established under IC 12-22-2 or community residential programs established under IC 12-11-1.1-1.

(k) A person with a mental illness may not be placed in a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., unless the facility is licensed under IC 16-28.

SECTION 2. IC 12-10-6-3, AS AMENDED BY P.L.1-2007, SECTION 117, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The division, in cooperation with the state department of health, taking into account licensure requirements under IC 16-28, shall adopt rules under IC 4-22-2 governing the reimbursement to facilities under section 2.1 of this chapter. The rules must be designed to determine the costs that must be incurred by efficiently and economically operated facilities in order to provide room, board, laundry, and other services, along with minimal administrative direction to individuals who receive residential care in the facilities under section 2.1 of this chapter.

(b) A rule adopted under this subsection (a) by:

(1) the division; or

(2) the state department of health;

must conform to the rules for residential care facilities that are licensed

under IC 16-28.

~~(b)~~ (c) Any rate established under section 2.1 of this chapter may be appealed according to the procedures under IC 4-21.5.

~~(c)~~ (d) The division shall annually review each facility's rate using the following:

(1) Generally accepted accounting principles.

(2) The costs incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

SECTION 3. IC 12-10-12-6, AS AMENDED BY P.L.50-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) This subsection does not apply after ~~June 30, 2008~~ **December 30, 2008**. If an individual who is discharged from a hospital licensed under IC 16-21:

(1) is admitted to a nursing facility after the individual has been screened under the nursing facility preadmission program described in this chapter; and

(2) is eligible for participation in the federal Medicaid program; prior approval of the individual's admission to the nursing facility may not be required by the office under IC 12-15-21-1 through IC 12-15-21-3.

(b) This subsection applies beginning ~~July 1, 2008~~ **December 31, 2008**. If an individual:

(1) is admitted to a nursing facility after the individual has been screened under the nursing facility preadmission program described in this chapter; and

(2) is eligible for participation in the federal Medicaid program; prior approval of the individual's admission to the nursing facility may be required by the office under IC 12-15-21-1 through IC 12-15-21-3.

(c) The office ~~may~~ **shall** adopt rules under IC 4-22-2 to implement:

(1) subsection (b);

**(2) a screening and counseling program for individuals seeking long term care services; and**

**(3) a biennial review of Medicaid waiver reimbursement rates.**

~~However, the adopted rules may not take effect before July 1, 2008.~~

SECTION 4. IC 12-10-12-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) A screening team shall conduct a nursing facility preadmission screening program for each individual within the time permitted under this chapter. The program must consist of an assessment of the following:

(1) The individual's medical needs.

(2) The availability of services, other than services provided in a nursing facility, that are appropriate to the individual's needs.

(3) The cost effectiveness of providing services appropriate to the individual's needs that are provided outside of, rather than within, a nursing facility.

(b) The assessment must be conducted in accordance with rules adopted under IC 4-22-2 by the director of the division in cooperation with the office.

(c) Communication among members of a screening team or between

a screening team and the division, ~~or the office, or the agency~~ during the prescreening process may be conducted ~~using~~ by means including any of the following:

- (1) Standard mail.
- (2) Express mail.
- (3) Facsimile machine.
- (4) Secured electronic communication.**

**SECTION 5. [EFFECTIVE MARCH 31, 2008] (a) This SECTION does not apply to the conversion of acute care beds to comprehensive care beds under IC 16-29-3.**

**(b) As used in this SECTION, "comprehensive care bed" means a bed that:**

- (1) is licensed or is to be licensed under IC 16-28-2;**
- (2) functions as a bed licensed under IC 16-28-2; or**
- (3) is subject to IC 16-28.**

**The term does not include a comprehensive care bed that will be used solely to provide specialized services and that is subject to IC 16-29.**

**(c) As used in this SECTION, "replacement bed" means a comprehensive care bed that is relocated to a health facility that is licensed or is to be licensed under IC 16-28. This term includes comprehensive care beds that are certified for participation in:**

- (1) the state Medicaid program; or**
- (2) both the state Medicaid program and federal Medicare program.**

**(d) Except as provided in subsection (e), the Indiana health facilities council may not recommend and the state department of health may not approve the certification of new or converted comprehensive care beds for participation in the state Medicaid program unless the statewide comprehensive care bed occupancy rate is more than ninety-five percent (95%), as calculated annually on January 1 by the state department of health.**

**(e) This SECTION does not apply to the following:**

- (1) A health facility that:**
  - (A) seeks a replacement bed exception;**
  - (B) is licensed or is to be licensed under IC 16-28;**
  - (C) applies to the state department of health to certify a comprehensive care bed for participation in the Medicaid program if the comprehensive care bed for which the health facility is seeking certification is a replacement bed for an existing comprehensive care bed;**
  - (D) applies to the division of aging in the manner:**
    - (i) described in subsection (f); and**
    - (ii) prescribed by the division; and**
  - (E) meets the licensure, survey, and certification requirements of IC 16-28.**
- (2) A continuing care retirement community required to file a disclosure statement under IC 23-2-4 if the continuing care retirement community is under development on March 30, 2008. In determining whether a continuing care retirement community is under development, the state department shall**

consider the following:

(A) whether:

- (i) architectural plans have been completed;
- (ii) funding has been received;
- (iii) zoning requirements have been met; and
- (iv) construction plans for the project have been approved by the state department and the division of fire and building safety; and

(B) any other evidence that the state department determines is an indication that the continuing care retirement community is under development.

(f) An application made under subsection (e)(1)(D) for a replacement bed exception must include the following:

(1) The total number and identification of the existing comprehensive care beds that the applicant requests be replaced by health facility location and by provider.

(2) If the replacement bed is being transferred to a different health facility, a verification from the health facility holding the comprehensive care bed certification that the health facility has agreed to transfer the beds to the applicant health facility.

(3) If the replacement bed is being transferred to a different health facility under different ownership, a copy of the complete agreement between the health facility transferring the beds and the applicant health facility.

(4) Any other information requested by the division of aging that is necessary to evaluate the transaction.

(g) This SECTION expires June 30, 2011.

SECTION 6. An emergency is declared for this act.

(Reference is to ESB 315 as reprinted February 27, 2008.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 315**

**S**igned by:

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Senator Dillon  
Chairperson

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Representative Hoy

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Senator Mrvan

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Representative Brown T

**Senate Conferees**

**House Conferees**